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Sent: Thursday, May 18, 2006 6:22 PM
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Subject: WC Docket No. 06-80 & CC Docket No. 96-45

At the request of James U. Troup, I have attached a copy of Rural Telephone Service Company, Inc.'s. and Nex-Tech, Inc.'s Reply Comments and as filed today in the above-referenced matters with the FCC's Electronic Comment Filing System. Should you have any questions, please feel free to contact Mr. Troup directly at (202) 857-1702.

Cordially,

Monica Gibson Moore
Legal Secretary to James U. Troup

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5/22/2006

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Domestic Section 214 Application Filed for the)	WC Docket No. 06-80
Acquisition of Assets of United Telephone)	
Company of Kansas and United Telephone)	
Company of Eastern Kansas by Rural Telephone)	
Service Company, Inc.)	
)	
Rural Telephone Service Company, Inc.,)	CC Docket No. 96-45
Nex-Tech, Inc.,)	
United Telephone Company of Kansas, and)	
United Telephone Company of Eastern Kansas)	
Seek Waiver of the Study Area Boundary Freeze)	
As Codified in Part 36, and Rural Telephone)	
Service Company, Inc. Seeks Waiver of Part)	
<u>69.3(e)(11) of the Commission's Rules</u>)	

**REPLY COMMENTS OF
RURAL TELEPHONE SERVICE COMPANY, INC. AND NEX-TECH, INC.**

Rural Telephone Service Company, Inc. ("RuralTel") and Nex-Tech, Inc. ("Nex-Tech") (collectively referred to herein as the "Petitioners"), by their undersigned attorneys, and pursuant to the Federal Communications Commission's ("FCC" or "Commission") Public Notice, DA 06-941 (released on April 27, 2006), respectfully submit the following reply to the comments filed in the above-captioned proceeding.

I. Introduction.

On April 3, 2006, RuralTel and United Telephone Company of Kansas and United Telephone of Eastern Kansas (collectively, "United") filed an application ("Section 214 Application"), pursuant to section 214 of the Communications Act of 1934, as amended,¹ and section 63.04 of the Commission's rules, requesting authority for the sale of the Burr Oak,

¹ 47 U.S.C. § 214.

Courtland, Esbon, Ionia, Lebanon, Republic, Webber, Downs, Luray, Osborne, Paradise, and Russell exchanges ("the "United Exchanges") from United to RuralTel. United, RuralTel and Nex-Tech have also filed a joint petition for waiver ("Joint Petition") of the study area boundary freeze as codified in the Appendix-Glossary of Part 36 of the Commission's rules to enable RuralTel to add the "United Exchanges" and the Nex-Tech's lines in Osborne to RuralTel's study area. RuralTel has requested a related waiver of section 69.3(e)(11) of the Commission's rules, effective on September 1, 2006, to allow it to use the National Exchange Carrier Association ("NECA") as its tariff pool administrator for the acquired exchanges.

II. The Expeditious Grant of Petitioners' Section 214 Application and Petition for Waiver Would Serve the Public Interest.

As demonstrated by the comments filed in this proceeding, grant of the Section 214 Application will serve the public interest because it will result in the efficient provision of high-quality telecommunications services to rural consumers, and it will result in direct benefits to customers in the United Exchanges. RuralTel intends to make several improvements to the facilities serving the United Exchanges, including the installation of fiber throughout the United Exchanges, which will enhance the redundancy and reliability of the network, as well as extend high-speed digital transmission capabilities to areas not currently served by the United network.² RuralTel will continue the provision of excellent service quality and customer service to subscribers within the exchanges it intends to purchase, and it will provide such service at affordable and competitive prices.

The Joint Petition for a waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the FCC's rules should also be granted with an effective date of September 1, 2006 because Petitioners have established good cause for speedy action by meeting

² Joint Petition at 10.

the Commission's three-prong standard for evaluating such waiver requests. First, Petitioners have demonstrated that the grant of a waiver will not adversely affect the Universal Service Fund (USF) support program. Exhibit B to the Joint Petition shows that the USF support program will not be materially impacted by the proposed changes to United's and RuralTel's study areas as the removal of United Exchanges from United's study area, and the inclusion of those exchanges in RuralTel's existing study areas, will not significantly impact the USF support fund as the amounts involved in the proposed transaction represent less than one percent (1%) of the total value of the USF support fund. Second, Petitioners anticipate that the Kansas Corporation Commission (KCC) will approve the sale of the United Exchanges to RuralTel within the near short term and that the KCC will have no objection to the Commission's grant of a study area waiver. Third, the proposed waiver serves the public interest by making it possible for RuralTel to upgrade the exchanges acquired from United in order to provide innovative and advanced telecommunications services to the rural consumers of Kansas.

Petitioners submit that the public interest will be further served by permitting the study area waiver to, if necessary, be effective *nunc pro tunc* on September 1, 2006, or the closing date of the transaction, whichever is later. If the Section 214 Application is granted by September 1, 2006, then the public interest will be served by making the grant of the waiver of the study area boundaries effective upon that date as well. RuralTel will neither receive compensation for services provided in the acquired exchanges nor any high-cost or ICLS support until the Commission grants the Joint Petition. As a consequence, unless both the Section 214 Application and the study area waiver are effective on September 1, 2006, RuralTel's ratepayers in exchanges outside those involved in the proposed transaction will bear the costs of providing

service in the acquired United Exchanges, including the costs of any upgrades or improvements, without receiving any benefit.

There is no industry opposition to the Section 214 Application or the Joint Petition. The National Telecommunications Cooperative Association (NTCA), an industry association representing more than 560 rural rate-of-return regulated telecommunications providers, "fully supports" Petitioners' request for a waiver of the study area boundaries.³ The Western Telecommunications Alliance, a trade association representing approximately 250 rural telephone companies operating in twenty-four states located west of the Mississippi River, concludes that the Petitioners have "met their burden" of proving good cause for the proposed study area waivers and urges the Commission to grant Petitioners' waiver request "as soon as possible."⁴ Finally, the National Exchange Carrier Association (NECA) has reviewed the Joint Petition and voices "no objection" to the proposed transaction.⁵

II. The Commission Should Grant a Waiver of Section 69.3(e)(11) to Avoid Imposing an Unwarranted Burden on RuralTel.

Petitioners' request for a waiver of Section 69.3(e)(11) should be granted considering (a) the relatively small number of access lines involved in this proceeding, *i.e.*, the transfer to RuralTel of approximately 5,000 access lines from United and 915 access lines from Nex-Tech, and (b) the undue administrative burden that Section 69.3(e)(11) would place on RuralTel to develop and file its own interstate tariff. Furthermore and independent of these two factors, special circumstances exist to justify a waiver of Section 69.3(e)(11) because RuralTel, the

³ National Telecommunications Cooperative Association Initial Comments at 2.

⁴ Supporting Comments of the Western Telecommunications Alliance at 2.

⁵ Letter from Tracey E.J. Saltenberger, Deputy General Counsel, NECA to Marlene H. Dortch, Secretary, Federal Communications Commission (May 5, 2006) at 2.

acquiring carrier, is already an issuing carrier for NECA's access tariff. *See, e.g., In re Blue Valley Telecommunications*, 20 FCC Rcd 19166 ¶ 12 (2005).

Under Section 69.3 of the Commission's rules, annual access tariffs, including tariffs filed by NECA on behalf of companies, including RuralTel, that participate in NECA's common line access tariffs, go into effect on July 1 of each year. Absent a waiver, RuralTel will have to wait until July 1, 2007 to participate in NECA's access tariffs, and will be required to file its own interstate tariff for the interim period. Such a filing would be administratively burdensome for the relatively small number of acquired access lines at issue, particularly when RuralTel relies on NECA's access tariffs for the 10,578 access lines RuralTel currently serves. The NCTA supports RuralTel's request for a waiver of Section 69.3(e)(11) of the Commission's rules so that RuralTel may bring the acquired lines and former CLEC operations within the Osborne exchange into the NECA common line access tariffs.⁶ NECA has also determined that it will not create an administrative burden for NECA to add those additional access lines to the NECA tariff.⁷

III. CONCLUSION

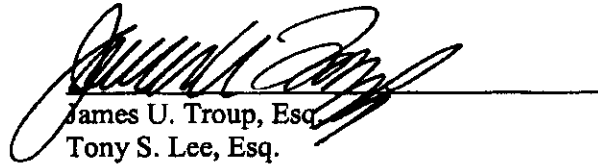
For the foregoing reasons, Petitioners request that the Commission issue an Order approving the transaction so it can close on September 1, 2006. Furthermore, Petitioners request that the Commission (a) waive the definition of "study area" contained in the Appendix-Glossary of Part 36 of FCC rules, with an effective date of September 1, 2006 or the closing of the transaction, whichever is later, and (b) waive 47 C.F.R. § 69.3(e)(11) in order to allow RuralTel

⁶ Joint Petition, NTCA Initial Comments at 3.

⁷ Letter from Tracey E.J. Saltenberger, Deputy General Counsel, NECA to Marlene H. Dortch, Secretary, Federal Communications Commission (May 5, 2006) at 2.

to rely upon NECA as its tariff pool administrator for the acquired exchanges effective upon the date the acquisition closes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James U. Troup", is written over a horizontal line.

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Date: May 18, 2006

CERTIFICATE OF SERVICE

I, James U. Troup, certify that a copy of the foregoing Reply Comments of Rural Telephone Service Company, Inc. and Nex-Tech, Inc. was served on this 18th day of May, 2006 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

/s/ James U. Troup
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